

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 174

AN ACT

To amend chapter 166, RSMo, by adding thereto ten new sections relating to the Missouri Achieving a Better Life Experience program.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Chapter 166, RSMo, is amended by adding thereto
2 ten new sections, to be known as sections 166.600, 166.605,
3 166.610, 166.615, 166.620, 166.625, 166.630, 166.635, 166.640,
4 and 166.645, to read as follows:

5 166.600. 1. As used in sections 166.600 to 166.645, except
6 where the context clearly requires another interpretation, the
7 following terms mean:

8 (1) "ABLE account", the same meaning as in Section 529A of
9 the Internal Revenue Code;

10 (2) "Benefits", the payment of qualified disability
11 expenses on behalf of a designated beneficiary from an ABLE
12 account;

13 (3) "Board", the Missouri Achieving a Better Life
14 Experience board established in section 166.605;

15 (4) "Designated beneficiary", the same meaning as in
16 Section 529A of the Internal Revenue Code;

1 (5) "Eligible individual", the same meaning as in Section
2 529A of the Internal Revenue Code;

3 (6) "Financial institution", a bank, insurance company or
4 registered investment company;

5 (7) "Internal Revenue Code", the Internal Revenue Code of
6 1986, as amended;

7 (8) "Missouri Achieving a Better Life Experience program"
8 or "ABLE", the program created pursuant to sections 166.600 to
9 166.645;

10 (9) "Participant", a person who has entered into a
11 participation agreement pursuant to sections 166.600 to 166.645
12 for the advance payment of qualified disability expenses on
13 behalf of a designated beneficiary. Unless otherwise permitted
14 under Section 529A of the Internal Revenue Code the participant
15 shall be the designated beneficiary of the ABLE Account, except
16 that if the designated beneficiary of the account is a minor or
17 has a custodian or other fiduciary appointed for the purpose of
18 managing his or her financial affairs, the parent or custodian or
19 other fiduciary of the designated beneficiary may serve as the
20 participant if such form of ownership is permitted or not
21 prohibited by Section 529A of the Internal Revenue Code;

22 (10) "Participation agreement", an agreement between a
23 participant and the board pursuant to and conforming with the
24 requirements of sections 166.600 to 166.645; and

25 (11) "Qualified disability expenses", the same meaning as
26 in Section 529A of the Internal Revenue Code.

27 166.605. 1. There is hereby created the "Missouri
28 Achieving a Better Life Experience Program". The program shall

1 be administered by the Missouri ABLE board which shall consist of
2 the Missouri state treasurer who shall serve as chairman, the
3 director of the department of health and senior services or his
4 or her designee, the commissioner of the office of administration
5 or his or her designee, the director of the department of
6 economic development or his or her designee, two persons having
7 demonstrable experience and knowledge in the areas of finance or
8 the investment and management of public funds, one of whom is
9 selected by the president pro tempore of the senate and one of
10 whom is selected by the speaker of the house of representatives,
11 and one person having demonstrable experience and knowledge in
12 the area of banking or deposit rate determination and placement
13 of depository certificates of deposit or other deposit
14 investments. Such member shall be appointed by the governor with
15 the advice and consent of the senate. The three appointed
16 members shall be appointed to serve for terms of four years from
17 the date of appointment, or until their successors shall have
18 been appointed and qualified. The members of the board shall be
19 subject to the provisions of section 105.452. Any member who
20 violates the provisions of section 105.452 shall be removed from
21 the board.

22 2. In order to establish and administer the ABLE program,
23 the board, in addition to its other powers and authority, shall
24 have the power and authority to:

25 (1) Develop and implement the Missouri Achieving a Better
26 Life Experience program;

27 (2) Promulgate reasonable rules and regulations and
28 establish policies and procedures to implement sections 166.600

1 to 166.645 to permit the ABLE program to qualify as a "qualified
2 ABLE program" pursuant to Section 529A of the Internal Revenue
3 Code and to ensure ABLE program's compliance with all applicable
4 laws;

5 (3) Develop and implement educational programs and related
6 informational materials for participants, either directly or
7 through a contractual arrangement with a financial institution
8 for investment services, and their families, including special
9 programs and materials to inform individuals with disabilities
10 regarding methods for financing the lives of individuals with
11 disabilities so as to maintain health, independence, and quality
12 of life;

13 (4) Enter into agreements with any financial institution,
14 or any state or federal agency or entity as required for the
15 operation of the ABLE program pursuant to sections 166.600 to
16 166.645;

17 (5) Enter into participation agreements with participants;

18 (6) Accept any grants, gifts, legislative appropriations,
19 and other moneys from the state, any unit of federal, state, or
20 local government or any other person, firm, partnership, or
21 corporation for deposit to the account of the ABLE program;

22 (7) Invest the funds received from participants in
23 appropriate investment instruments to achieve long-term total
24 return through a combination of capital appreciation and current
25 income;

26 (8) Make appropriate payments and distributions on behalf
27 of designated beneficiaries pursuant to participation agreements;

28 (9) Make refunds to participants upon the termination of

1 participation agreements pursuant to the provisions, limitations,
2 and restrictions set forth in sections 166.600 to 166.645 and the
3 rules adopted by the board;

4 (10) Make provision for the payment of costs of
5 administration and operation of the ABLE program;

6 (11) Effectuate and carry out all the powers granted by
7 sections 166.600 to 166.645, and have all other powers necessary
8 to carry out and effectuate the purposes, objectives and
9 provisions of sections 166.600 to 166.645 pertaining to the ABLE
10 program; and

11 (12) Procure insurance, guarantees or other protections
12 against any loss in connection with the assets or activities of
13 the ABLE program.

14 3. Four members of the board shall constitute a quorum. No
15 vacancy in the membership of the board shall impair the right of
16 a quorum to exercise all the rights and perform all the duties of
17 the board. No action shall be taken by the board except upon the
18 affirmative vote of a majority of the members present. Any
19 member of the board may designate a proxy for that member who
20 will enjoy the full voting privileges of that member for the one
21 meeting so specified by such member. No more than three proxies
22 shall be considered members of the board for purposes of
23 establishing a quorum.

24 4. The board shall meet within the state of Missouri at the
25 time set at a previously scheduled meeting or by the request of
26 any four members of the board. Notice of the meeting shall be
27 delivered to all members of the board in person or by depositing
28 notice in a United States post office in a properly stamped and

1 addressed envelope not less than six days prior to the date fixed
2 for the meeting. The board may meet at any time by unanimous
3 mutual consent. There shall be at least one meeting in each
4 quarter.

5 5. The funds of the ABLE program shall be invested only in
6 those investments which a prudent person acting in a like
7 capacity and familiar with these matters would use in the conduct
8 of an enterprise of a like character and with like aims, as
9 provided in section 105.688. For new contracts entered into
10 after August 28, 2015, board members shall study investment plans
11 of other states and contract with or negotiate to provide benefit
12 options the same as or similar to other states' qualified plans
13 for the purpose of offering additional options for members of the
14 plan. The board may delegate to duly appointed investment
15 counselors authority to act in place of the board in the
16 investment and reinvestment of all or part of the moneys and may
17 also delegate to such counselors the authority to act in place of
18 the board in the holding, purchasing, selling, assigning,
19 transferring, or disposing of any or all of the securities and
20 investments in which such moneys shall have been invested, as
21 well as the proceeds of such investments and such moneys. Such
22 investment counselors shall be registered as investment advisors
23 with the United States Securities and Exchange Commission. In
24 exercising or delegating its investment powers and authority,
25 members of the board shall exercise ordinary business care and
26 prudence under the facts and circumstances prevailing at the time
27 of the action or decision. No member of the board shall be
28 liable for any action taken or omitted with respect to the

1 exercise of, or delegation of, these powers and authority if such
2 member shall have discharged the duties of his or her position in
3 good faith and with that degree of diligence, care, and skill
4 which a prudent person acting in a like capacity and familiar
5 with these matters would use in the conduct of an enterprise of a
6 like character and with like aims.

7 6. No investment transaction authorized by the board shall
8 be handled by any company or firm in which a member of the board
9 has a substantial interest, nor shall any member of the board
10 profit directly or indirectly from any such investment.

11 7. No member of the board or employee of the ABLE program
12 shall receive any gain or profit from any funds or transaction of
13 the ABLE program. Any member of the board, employee, or agent of
14 the ABLE program accepting any gratuity or compensation for the
15 purpose of influencing such member of the board's, employee's, or
16 agent's action with respect to the investment or management of
17 the funds of the ABLE program shall thereby forfeit the office
18 and in addition thereto be subject to the penalties prescribed
19 for bribery.

20 166.610. 1. The board may enter into ABLE program
21 participation agreements with participants on behalf of
22 designated beneficiaries pursuant to the provisions of sections
23 166.600 to 166.645, including the following terms and conditions:

24 (1) A participation agreement shall stipulate the terms and
25 conditions of the ABLE program in which the participant makes
26 contributions;

27 (2) A participation agreement shall specify the method for
28 calculating the return on the contribution made by the

1 participant;

2 (3) A participation agreement shall clearly and prominently
3 disclose to participants the risk associated with depositing
4 moneys with the board;

5 (4) Participation agreements shall be organized and
6 presented in a way and with language that is easily
7 understandable by the general public; and

8 (5) A participation agreement shall clearly and prominently
9 disclose to participants the existence of any load charge or
10 similar charge assessed against the accounts of the participants
11 for administration or services.

12 2. The board shall establish the maximum amount which may
13 be contributed annually by a participant with respect to a
14 designated beneficiary which shall in no event be less than the
15 amount established as the contribution limit by the Missouri
16 higher education savings program board for qualified tuition
17 savings programs established under sections 166.400 to 166.450.

18 3. The board shall establish a total contribution limit for
19 savings accounts established under the ABLE program with respect
20 to a designated beneficiary which shall in no event be less than
21 the amount established as the contribution limit by the Missouri
22 higher education savings program board for qualified tuition
23 savings programs established under sections 166.400 to 166.450.
24 No contribution shall be made to an ABLE account for a designated
25 beneficiary if it would cause the balance of the ABLE account of
26 the designated beneficiary to exceed the total contribution limit
27 established by the board. The board may establish other
28 requirements that it deems appropriate to provide adequate

1 safeguards to prevent contributions on behalf of a designated
2 beneficiary from exceeding what is necessary to provide for the
3 qualified disability expenses of the designated beneficiary.

4 4. The board shall establish the minimum length of time
5 that contributions and earnings must be held by the ABLE program
6 to qualify as tax exempt pursuant to section 166.625. Any
7 contributions or earnings that are withdrawn or distributed from
8 an ABLE account prior to the expiration of the minimum length of
9 time, as established by the board, shall be subject to a penalty
10 pursuant to section 166.620.

11 166.615. All money paid by a participant in connection with
12 a participation agreement shall be deposited as received and
13 shall be promptly invested by the board. Contributions and
14 earnings thereon accumulated on behalf of participants in the
15 ABLE program may be used, as provided in the participation
16 agreement, for qualified disability expenses.

17 166.620. Any participant may cancel a participation
18 agreement at will. The board shall impose a penalty equal to or
19 greater than ten percent of the earnings of an ABLE account for
20 any distribution that is not:

21 (1) Used exclusively for qualified disability expenses of
22 the designated beneficiary;

23 (2) Made because of death of the designated beneficiary; or

24 (3) Held in the fund for the minimum length of time
25 established by the board.

26 166.625. 1. Notwithstanding any law to the contrary, the
27 assets of the ABLE program held by the board and the assets of
28 any ABLE account and any income therefrom shall be exempt from

1 all taxation by the state or any of its political subdivisions.
2 Income earned or received from an ABLE account or deposit shall
3 not be subject to state income tax imposed pursuant to chapter
4 143. The exemption from taxation pursuant to this section shall
5 apply only to assets and income maintained, accrued, or expended
6 pursuant to the requirements of the ABLE program established
7 pursuant to sections 166.600 to 166.645, and no exemption shall
8 apply to assets and income expended for any other purposes.
9 Annual contributions made to the ABLE program held by the board
10 up to and including eight thousand dollars per participating
11 taxpayer, and up to sixteen thousand dollars for married
12 individuals filing a joint tax return, shall be subtracted in
13 determining Missouri adjusted gross income pursuant to section
14 143.121.

15 2. If any deductible contributions to or earnings from any
16 such program referred to in this section are distributed and not
17 used to pay qualified disability expenses or are not held for the
18 minimum length of time established by the appropriate Missouri
19 board, the amount so distributed shall be added to the Missouri
20 adjusted gross income of the participant, or, if the participant
21 is not living, the designated beneficiary.

22 3. The provisions of this section shall apply to tax years
23 beginning on or after January 1, 2015.

24 166.630. The assets of the ABLE program shall at all times
25 be preserved, invested, and expended only for the purposes set
26 forth in this section and in accordance with the participation
27 agreements, and no property rights therein shall exist in favor
28 of the state.

1 166.635. Any rule or portion of a rule, as that term is
2 defined in section 536.010 that is created under the authority
3 delegated in this section shall become effective only if it
4 complies with and is subject to all of the provisions of chapter
5 536, and, if applicable, section 536.028. This section and
6 chapter 536 are nonseverable and if any of the powers vested with
7 the general assembly pursuant to chapter 536, to review, to delay
8 the effective date, or to disapprove and annul a rule are
9 subsequently held unconstitutional, then the grant of rulemaking
10 authority and any rule proposed or adopted after August 28, 2015,
11 shall be invalid and void.

12 166.640. The director of investment of the state
13 treasurer's office shall, on a semiannual basis, review the
14 financial status and investment policy of the program as well as
15 the participation rate in the program. The director of
16 investment shall also review the continued viability of the
17 program and the administration of the program by the board. The
18 director of investment shall report the findings annually to the
19 board, which shall subsequently disclose such findings at a
20 public meeting.

21 166.645. Money accruing to and deposited in individual ABLE
22 accounts shall not be part of "total state revenues" as defined
23 in sections 17 and 18 of article X of the Constitution of the
24 State of Missouri and the expenditure of such revenues shall not
25 be an expense of state government under section 20 of article X
26 of the Constitution of the State of Missouri.